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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

NINETY-FIVE MADISON COMPANY, L.P.,

Debtor.

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Chapter 11

Case No. 21-10529 (DSJ)

**LIMITED OBJECTION OF BRANTON REALTY SERVICES LLC TO
DEBTOR'S MOTION PURSUANT TO SECTIONS 105, 363, 365 AND 1146
OF THE BANKRUPTCY CODE AND RULES 2002, 6004, 6006 AND 9014 THE
OF FEDERAL RULES OF BANKRUPTCY PROCEDURE FOR ENTRY OF AN
ORDER (I) APPROVING THE SALE OF THE PROPERTY FREE AND CLEAR
OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS (EXCEPT
PERMITTED ENCUMBRANCES), (II) APPROVING THE ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES
RELATED THERETO, AND (III) GRANTING RELATED RELIEF**

Branton Realty Services LLC ("Branton"), by and through its undersigned counsel,
hereby submits this Limited Objection (the "Objection") to the *Motion of Ninety-Five Madison
Company, L.P. (the "Debtor") Pursuant to Sections 105, 363, 365 and 1146 of the Bankruptcy
Code and Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure for
Entry of an Order (I) Approving the Sale of the Property Free and Clear of All Liens, Claims,*

Encumbrances and Interests (Except Permitted Encumbrances), (II) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases Related Thereto, and (III) Granting Related Relief (the “Motion”). In support thereof, Branton respectfully represents as follows:

PRELIMINARY STATEMENT

1. Branton does not object to the request for approval of the sale of the Property to the highest bidder. Branton, however, files this limited objection to protect its rights - rights approved by two separate orders of this Court. As more fully set forth in Branton’s engagement letters, granted by the Debtors and approved by this Court, Branton is entitled to indemnification and prompt payment of its commission and expenses (subject to submission of a fee application). The sale cannot deprive Branton of these rights and any order approving the sale should ensure all of Branton’s rights are preserved.

BACKGROUND

2. The Debtor engaged Branton as real estate broker and sales agent to market and sell the property located at 95 Madison Avenue, New York, NY (the “Property”) pursuant to that certain Listing Agreement For Sale, dated August 18, 2002 (the “Agreement”). The Court approved the Agreement, by order dated August 31, 2022 (Docket No. 181, attached as **Exhibit A**).

3. Pursuant to the terms of the Agreement, among other things, Branton is entitled to payment of its real estate or sales agent commission (the “Commission”) upon the closing of a sale or other transaction (a “Closing”) affecting the Property, subject to certain conditions,¹ as well as customary and standard indemnification rights and reimbursement of expenses.

¹ Pursuant to the Stipulation Extending Time To File Fee Application, dated March 28, 2024 (Docket No. 339), the Debtor and Branton agreed to extend the deadline for Branton to file a fee application until 10 days after the

4. In or about the Spring of 2023, Branton became aware of certain litigation threats made by one of the Debtor’s general partners, RAS Property Management, LLC (“RAS”). As described by RAS, these are “claims that may arise because of the Debtor’s failure to follow appropriate procedures in accordance with its governing documents.” See *Objection to Application of Debtor Ninety-Five Madison Company, L.P. For An Order Amending the Order Pursuant to 11 U.S.C §§ 327(a) and 328(a) Authorizing the Retention and Employment of Branton Realty Services LLC as Real Estate Broker and Sales Agent Nunc Pro Tunc to August 18, 2022*, filed by RAS (Docket No. 239), ¶ 4, at 2.

5. Accordingly, the Debtor and Branton entered into that certain Amendment of Listing Agreement for Sale, dated April 18, 2023 (the “Amendment”). On May 1, 2023, the Debtor filed the *Supplemental Application of Debtor Ninety-Five Madison Company, L.P. for an Order Amending the Order Pursuant to 11 U.S.C §§ 327(a) and 328(a) Authorizing the Retention and Employment of Branton Realty Services LLC* (Docket No. 234), seeking approval of the Amendment.

6. The Court approved the Amendment, over the Objection of RAS, by order dated May 25, 2023 (Docket No. 243, attached as **Exhibit B**). Pursuant to the Amendment, the Debtor agreed to provide broader indemnification to protect Branton against certain litigation claims that might be asserted against Branton (the “Indemnity”).

7. On September 27, 2023, the Debtor filed the *Combined Chapter 11 Plan of Reorganization and Disclosure Statement for Debtor Ninety-Five Madison Company, L.P.* On December 15, 2023, the Debtor filed the *Amended Combined Chapter 11 Plan of Reorganization*

Closing. Accordingly, this Limited Objection does not seek to compel payment of the Commission, but merely to ensure that payment will be made directly to Branton at Closing or escrowed with payment to follow entry of an order of this Court.

and Disclosure Statement for Debtor Ninety-Five Madison Company, L.P. (Docket No. 274) (the “Plan”). On December 21, 2023, the Court entered the *Order Approving and Confirming Debtor’s Amended Combined Chapter 11 Plan of Reorganization* (Docket No. 300). On February 20, 2024 (Docket No. 323), the Debtor filed a Notice of Effective Date of the Plan.

8. As relevant here, the Plan provides that all claims, including administrative expense claims, will be paid in full and that all claims and equity interests are unimpaired.

9. The Indemnity and Branton’s rights to payment of the Commission constitute administrative expense claims. Branton’s rights arose post-petition, were approved by the Court and provided benefit to the estate.

BRANTON IS ENTITLED TO ADEQUATE PROTECTION OF ITS INDEMNITY

10. There remains a risk that certain of the General Partners of the Debtor may, without basis, seek to assert claims against Branton of the type that led to the Indemnity in the Amendment. Branton is entitled to the protection it negotiated for, the Debtor granted and the Court approved.

11. As set forth in the Plan, the Debtor likely will distribute all sale proceeds to creditors and equity holders at the Closing. As a result, if a claim is asserted against Branton, the Debtor will be unable to satisfy its obligations to Branton under the Indemnity.

12. Accordingly, Branton is entitled to adequate protection of its Indemnity. Appropriate adequate protection should take the form of either (A) an escrow fund established in an amount sufficient to protect Branton from any claims that may be asserted, as well as the cost of defense or, in the alternative (B) general releases from all relevant parties.

**THE PLAN REQUIRES THE DEBTOR TO ENSURE
BRANTON'S CLAIMS ARE PAID IN FULL**

13. The Plan requires payment in full of all Allowed Administrative Expenses. See Plan Article II. A., at 22. To the extent a litigation claim is asserted against Branton, Branton's Indemnity will be an administrative expense. Payment of Branton's Commission also is an administrative expense. In order to comply with the terms of the Plan, the Debtor must ensure that any indemnification claim of Branton is paid in full.

CONCLUSION

WHEREFORE, Branton respectfully requests that the Court order the relief set forth above and grant such other relief as this Court deems proper and just.

Dated: April __, 2024
New York, New York



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